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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/770,650	02/02/2004	Robert W. Haight	60607-300602	1593

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EXAMINER

WEST, LEWIS G

ART UNIT PAPER NUMBER

2618

DATE MAILED: 08/30/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/770,650

Applicant(s)

HAIGHT ET AL.

Examiner

Lewis G. West

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 02 February 2004.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 23-40 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 23-40 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 02 February 2004 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date <u>1 paper</u> . | 6) <input type="checkbox"/> Other: _____ |

Information Disclosure Statement

The information disclosure statement filed February 2, 2004 fails to comply with the provisions of 37 CFR 1.97, 1.98 and MPEP § 609 because it is not of the proper format leaving spaces for initial and signature by the examiner and is not clearly indicated as an IDS. It has been placed in the application file, but the information referred to therein has not been considered as to the merits. Applicant is advised that the date of any re-submission of any item of information contained in this information disclosure statement or the submission of any missing element(s) will be the date of submission for purposes of determining compliance with the requirements based on the time of filing the statement, including all certification requirements for statements under 37 CFR 1.97(e). See MPEP § 609.05(a).

The listing of references in the specification is not a proper information disclosure statement. 37 CFR 1.98(b) requires a list of all patents, publications, or other information submitted for consideration by the Office, and MPEP § 609.04(a) states, "the list may not be incorporated into the specification but must be submitted in a separate paper." Therefore, unless the references have been cited by the examiner on form PTO-892, they have not been considered.

Specification

The disclosure is objected to because it contains an embedded hyperlink and/or other form of browser-executable code. Applicant is required to delete the embedded hyperlink and/or other form of browser-executable code. See MPEP § 608.01.

Claim Objections

Claims 24-28, 30-34 and 36-40 are objected to under 37 CFR 1.75(c), as being of improper dependent form for failing to further limit the subject matter of a previous claim. Applicant is required to cancel the claim(s), or amend the claim(s) to place the claim(s) in proper dependent form, or rewrite the claim(s) in independent form. Claims 24-28 depend from claim 1, which is cancelled. Claims 30-34 depend from claim 7, which is cancelled. Claims 36-40 depend from claim 13, which is cancelled.

Claim Rejections - 35 USC § 112

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claim 24-28, 30-34 and 36-40 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claims 24-28 depend from claim 1, which is cancelled. Claims 30-34 depend from claim 7, which is cancelled. Claims 36-40 depend from claim 13, which is cancelled. Since these claims do not depend from actual parent claims no antecedent basis is provided for.

For examination, it will be assumed that applicants intended the claims to depend from the closest preceding independent claim.

Double Patenting

The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or

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improper timewise extension of the “right to exclude” granted by a patent and to prevent possible harassment by multiple assignees. A nonstatutory obviousness-type double patenting rejection is appropriate where the conflicting claims are not identical, but at least one examined application claim is not patentably distinct from the reference claim(s) because the examined application claim is either anticipated by, or would have been obvious over, the reference claim(s). See, e.g., *In re Berg*, 140 F.3d 1428, 46 USPQ2d 1226 (Fed. Cir. 1998); *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) or 1.321(d) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent either is shown to be commonly owned with this application, or claims an invention made as a result of activities undertaken within the scope of a joint research agreement.

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

Claims 23, 29 and 35 are rejected on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claims 1 and 12 of U.S. Patent No. 6,704,542. Although the conflicting claims are not identical, they are not patentably distinct from each other because applicant has merely removed the limitation of communicating via the evanescent waves, making the claim broader while still covering the scope of the parent claim.

Claims 24, 30 and 36 are rejected on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claim 6 of U.S. Patent No. 6,704,542. Although the conflicting claims are not identical, they are not patentably distinct from each other because applicant has merely removed the limitation of communicating via the evanescent waves, making the claim broader while still covering the scope of the parent claim.

Claims 26, 32 and 38 are rejected on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claim 10 of U.S. Patent No. 6,704,542. Although the

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conflicting claims are not identical, they are not patentably distinct from each other because applicant has merely removed the limitation of communicating via the evanescent waves, making the claim broader while still covering the scope of the parent claim.

Claims 27, 33 and 39 are rejected on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claim 3 of U.S. Patent No. 6,704,542. Although the conflicting claims are not identical, they are not patentably distinct from each other because applicant has merely removed the limitation of communicating via the evanescent waves, making the claim broader while still covering the scope of the parent claim.

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

Claims 23-40 are rejected under 35 U.S.C. 102(e) as being anticipated by Gaucher (US 6,175,860 B1).

Regarding claim 23, Gaucher discloses a communication system comprising:

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A hub for communicating at least one first signal and at least one second signal, converting the first signal into a radio frequency with an appropriate format and transmitting the first signal to conductive elements via an exciter, (Col. 5 lines 29-35)

A probe for receiving the first signal, converting the first signal into the second signal and transmitting the second signal to the hub via the exciter, (Col. 5 lines 36-60)

wherein the conductive elements are conductive members selected from a conductive framework, electrical wires, metal walls or any combination thereof, (Col.4 lines 48-51)

and the conductive elements receive the second signal from the probe and transmit the second signal to the exciter. (Col. 5 lines 36-60)

Regarding claim 24, Gaucher discloses the system as recited in claim 1, wherein the hub includes at least one of a diplexer, a power amplifier, a transmitter, a receiver, a frequency converter, a modem, a security controller, and a network processor. (Col. 4 lines 59-31)

Regarding claim 25, Gaucher discloses the system recited in claim 2, wherein the security controller processes signals from a camera or another hub comprising a receiver and a transmitter. (Col. 5 lines 19-27)

Regarding claim 26, Gaucher discloses the system as recited in claim 1, wherein at least one of the first signal and the second signal are at a radio frequency between 0.5-100 MHz. (Col 4 lines 6-13)

Regarding claim 27, Gaucher discloses the system as recited in claim 2, wherein at least one of the first signal and the second signal includes information from at least one of a satellite

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television, a cable television, an Internet provider, a computing device, a phone provider, a DVD player, a television, a DSL and LAN. (Col. 4 lines 48-65)

Regarding claim 28, Gaucher discloses the system of claim 1, wherein the hub is connected to another hub by a hard wire or wirelessly. (Col. 4 lines 48-65)

Regarding claim 29, Gaucher discloses a communication method comprising the steps of communicating at least one first signal and at least one second signal, converting the first signal into a radio frequency with an appropriate format and transmitting the first signal to conductive elements via an exciter, (Col. 5 lines 29-35)

receiving the first signal, converting the first signal into the second signal and transmitting the second signal to the hub via the exciter, (Col. 5 lines 36-60)

wherein the conductive elements are conductive members selected from a conductive framework, electrical wires, metal walls or any combination thereof; (Col.4 lines 48-51)

and the conductive elements receive the second signal from the probe and transmit the second signal to the exciter. (Col. 5 lines 36-60)

Regarding claim 30, Gaucher discloses the method as recited in claim 7, wherein the hub includes at least one of a diplexer, a power amplifier, a transmitter, a receiver, a frequency converter, a modem, a security controller, and a network processor. (Col. 4 lines 59-31)

Regarding claim 31, Gaucher discloses the method recited in claim 8, wherein the security controller processes signals from a camera or another hub comprising a receiver and a transmitter. (Col. 5 lines 19-27)

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Regarding claim 32, Gaucher discloses the method as recited in claim 7, wherein at least one of the first signal and the second signal are at a radio frequency between 0.5-100 MHz. (Col 4 lines 6-13)

Regarding claim 33, Gaucher discloses the method as recited in claim 7, wherein at least one of the first signal and the second signal includes information from at least one of a satellite television, a cable television, an Internet provider, a computing device, a phone provider, a DVD player, a television, a DSL and LAN. (Col. 4 lines 48-65)

Regarding claim 34, Gaucher discloses the method of claim 7, wherein the hub is connected to another hub by a hard wire or wirelessly. (Col. 4 lines 48-65)

Regarding claim 35, Gaucher discloses a hub utilizing for a communication system, wherein the hub for communicating at least one first signal and at least one second signal, converting the first signal into a radio frequency with an appropriate format and transmitting the first signal to conductive elements via an exciter, (Col. 5 lines 29-35)

wherein the communication system includes a probe for receiving the first signal, converting the first signal into the second signal and transmitting the second signal to the hub via the exciter, (Col. 5 lines 36-60)

wherein the conductive elements are conductive members selected from a conductive framework, electrical wires, metal walls or any combination thereof; (Col.4 lines 48-51)

and the conductive elements receive the second signal from the probe and transmit the second signal to the exciter. (Col. 5 lines 36-60)

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Regarding claim 36, Gaucher discloses the system as recited in claim 13, wherein the hub includes at least one of a diplexer, a power amplifier, a transmitter, a receiver, a frequency converter, a modem, a security controller, and a network processor. (Col. 4 lines 59-31)

Regarding claim 37, Gaucher discloses the system recited in claim 14, wherein the security controller processes signals from a camera or another hub comprising a receiver and a transmitter. (Col. 5 lines 19-27)

Regarding claim 38, Gaucher discloses the system as recited in claim 13, wherein at least one of the first signal and the second signal are at a radio frequency between 0.5-100 MHz. (Col. 4 lines 6-13)

Regarding claim 39, Gaucher discloses the system as recited in claim 13, wherein at least one of the first signal and the second signal includes information from at least one of a satellite television, a cable television, an Internet provider, a computing device, a phone provider, a DVD player, a television, a DSL and LAN. (Col. 4 lines 48-65)

Regarding claim 40, Gaucher discloses the system of claim 13, wherein the hub is connected to another hub by a hard wire or wirelessly. (Col. 4 lines 48-65)

Conclusion

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Hershey (6,329,928) is also cited as relevant to short range distribution

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communications. Schyndel (6,336,031) discloses a quasi-static exciter for electric field communications using radio frequencies.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Lewis G. West whose telephone number is 571-272-7859. The examiner can normally be reached on Monday-Friday 7:00-3:30.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Matthew D. Anderson can be reached on 571-272-4177. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.



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